

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

EASTERN DIVISION

FM HOLDINGS, LLC f/k/a  
FORWARDMARKET, LLC,

Plaintiff,

v.

BILL MAHONEY and  
STEPHEN GREGORIO,

Defendants.

Civ. No. 05-11400-MLW

**JOINT REPORT OF RULE 26(f) CONFERENCE**

Pursuant to Rule 26(f), Fed. R. Civ. P., the undersigned attorneys for the parties submit this report of a telephonic conference held on September 14, 2005 to discuss a discovery schedule and related matter.

1. Automatic Disclosures. Plaintiff has produced its statement of its Initial Disclosures under Rule 26(a)(1), Fed. R. Civ. P. and Local Rule 26.2. The defendants will produce its statement of its Initial Disclosures by October 21, 2005.

2. Discovery and Motion Schedule. The parties' proposed timetable for completing the various phases of discovery and serving and filing various dispositive motions is as follows:

<u>EVENT</u>	<u>Proposed Deadline for Completion</u>
Fact Discovery	June 14, 2006
Plaintiff's identification of experts and disclosure of information pursuant to Fed. R. Civ. P. 26(a)(2)	July 14, 2006
Defendant's identification of experts and disclosure of information pursuant to Fed. R. Civ. P. 26(a)(2)	August 15, 2006
Expert Depositions	September 13, 2006
Summary judgment motions filed	October 13, 2006

3. Discovery Limits. The parties agree that they will be able to conduct discovery within the limits set forth in Local Rule 26.1 (c).

4. Any Other Orders That Should Be Entered by the Court. The parties expect to agree on an appropriate protective order to protect confidential information of the parties to the case as well as third party witnesses. Other than the protective order, the parties do not foresee any other orders that should be entered by the Court at this time.

Dated: November 10, 2005, 2005

s/Matthew C. Welnicki/

s/Michael S. Shin/

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Sanford F. Remz (BBO# 538300)  
Matthew C. Welnicki (BBO# 647104)  
YURKO, SALVESEN & REMZ, P.C.  
One Washington Mall, 11<sup>th</sup> Floor  
Boston, MA 02108-2603  
Attorneys for Plaintiff

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Timothy C. Blank (BBO # 548670)  
Michael S. Shin (BBO # 658134)  
Matthew M. Lyons (BBO # 657685)  
DECHERT LLP  
200 Clarendon Street, 27th Floor  
Boston, MA 02116  
(617) 723-6900  
Attorneys for Defendants

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**CERTIFICATION PURSUANT TO LOCAL RULE 16.1(d) (3)**

The undersigned, counsel for the plaintiff and a duly authorized representative of plaintiff, certify that they have conferred:

- (a) with a view to establishing a budget for the costs of conducting the full course – and various alternative courses – of litigation; and
- (b) to consider the resolution of the litigation through the use of alternative dispute resolution programs such as those outlined in LR 16.4.

Dated: May 16, 2006.

FM HOLDINGS, LLC


By: Kevin Swenke  
Kevin Swenke, its managing member

Sanford F. Remz  
Sanford F. Remz  
Yurko, Salvesen & Remz, P.C.  
One Washington Mall, 11<sup>th</sup> Floor  
Boston, MA 02108  
(617)723-6900

Attorneys for Plaintiff

**Defendants' Certification Pursuant to Local Rule 16.1(D)(3)**

The undersigned counsel and defendants Bill Mahoney and Stephen Gregorio hereby certify that they have conferred: (a) with a view to establish a budget for the costs of conducting the full course – and various alternative courses – of the litigation; and (b) to consider the resolution of the litigation through the use of alternative dispute resolution programs such as those outlined in Local Rule 16.4.

  
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Timothy C. Blank BBO # 548670  
DECHERT LLP  
200 Clarendon Street, 27<sup>th</sup> Floor  
Boston, MA 02116  
(617) 728-7154 (tel)  
(617) 426-6567 (fax)  
*Attorneys for Defendants*

Dated: May 17, 2006

\_\_\_\_\_  
Bill Mahoney

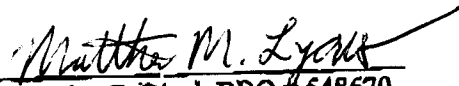
Dated: \_\_\_\_\_, 2006

  
\_\_\_\_\_  
Stephen Gregorio


Dated: 5/17, 2006

**Defendants' Certification Pursuant to Local Rule 16.1(D)(3)**

The undersigned counsel and defendants Bill Mahoney and Stephen Gregorio hereby certify that they have conferred: (a) with a view to establish a budget for the costs of conducting the full course - and various alternative courses - of the litigation; and (b) to consider the resolution of the litigation through the use of alternative dispute resolution programs such as those outlined in Local Rule 16.4.

  
Timothy C. Blank BBO # 548670  
DECHERT LLP  
200 Clarendon Street, 27<sup>th</sup> Floor  
Boston, MA 02116  
(617) 728-7154 (tel)  
(617) 426-6567 (fax)  
*Attorneys for Defendants*

Dated: May 17, 2006

  
Bill Mahoney

\_\_\_\_\_  
Stephen Gregorio

Dated: 5/17, 2006

Dated: \_\_\_\_\_, 2006

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

## EASTERN DIVISION

FM HOLDINGS, LLC f/k/a  
FORWARDMARKET, LLC,

Plaintiff,

**V.**

**BILL MAHONEY and  
STEPHEN GREGORIO,**

**Defendants.**

Civ. No. 05-11400-MLW

**JOINT STATEMENT AND PROPOSED SCHEDULING  
ORDER PURSUANT TO FED. R. CIV. P. 26(f) AND LOCAL RULE 16.1**

The parties hereby submit the following Joint Statement, pursuant to Local Rule 16.1(D):

1. Schedule for Discovery and Motions. Counsel for the parties had previously agreed to a timetable for discovery as set forth in the Joint Report of Rule 26(f) conference, previously filed with the Court on November 10, 2005 and attached hereto as Appendix A. The parties are in agreement as to the desirability of an extension of the schedule to which they previously had agreed. However, they disagree as to how much additional time is required.

a. Plaintiff's position. This case was originally filed in the United States District Court for the Northern District of Texas in January 2005 before it was transferred to this District by order dated July 1, 2005. Plaintiff believes that an extension of

approximately two and one-half months of all previously agreed upon deadlines should be sufficient. The parties have already exchanged documents and interrogatory answers, have obtained documents from certain third parties and have noticed certain depositions, including depositions of all parties. Plaintiff believes that depositions can be completed this summer. Although the parties disagree on how much additional time is required for fact discovery, they agree on the remainder of the schedule. Plaintiff's proposed revised schedule is as follows:

<u>EVENT</u>	<u>Proposed Deadline for Completion</u>
Fact Discovery	August 31, 2006
Plaintiff's identification of experts and disclosure of information pursuant to Fed. R. Civ. P. 26(a)(2)	September 30, 2006
Defendant's identification of experts and disclosure of information pursuant to Fed. R. Civ. P. 26(a)(2)	October 30, 2006
Expert Depositions	November 30, 2006
Summary judgment motions filed	December 31, 2006

b. Defendants' position.

Defendants believe an extension of six months on all previously agreed upon deadlines would be appropriate. Defendants have not yet received documents from certain third parties (including Excelergy, Defendants' former employer and the current employer of Plaintiff's principal) that Defendants feel will be crucial to developing and understanding their case. In addition, Defendants are not yet satisfied that the documents

received from Plaintiff are complete, and are conducting follow-up discovery as necessary. No depositions have taken place in this case, and the list of potential witnesses in the plaintiff's initial disclosures is extensive. Defendants also believe that the difficulty of scheduling depositions with third parties who may be uncooperative will present scheduling difficulties for the busy summer months. In addition, the partner representing the Defendants must prepare for another trial beginning on September 11, 2006, the preparation for which will be occurring at the time of Plaintiff's proposed fact discovery deadline. Defendants proposed revised schedule is as follows:

<u>EVENT</u>	<u>Proposed Deadline for Completion</u>
Fact Discovery	December 15, 2006
Plaintiff's identification of experts and disclosure of information pursuant to Fed. R. Civ. P. 26(a)(2)	January 15, 2007
Defendant's identification of experts and disclosure of information pursuant to Fed. R. Civ. P. 26(a)(2)	February 15, 2007
Expert Depositions	March 13, 2007
Summary judgment motions filed	April 16, 2007

2. Discovery Limits. The parties have agreed that they will be able to conduct discovery within the limits set forth in Local Rule 26.1 (C).

3. Settlement. Pursuant to Local Rule 16.1 (C), Plaintiff has tendered a written settlement proposal to Defendants. Defendants' counsel will respond to the settlement proposal at or prior to the Scheduling Conference.

4. Trial by Magistrate Judge. At this time, neither party is prepared to consent



to trial by a Magistrate Judge.

5. Budget and Alternative Dispute Resolution. Counsel for the parties have conferred with their respective clients concerning establishing a budget for litigation and the

use of Alternative Dispute Resolution ("ADR"). At this juncture, the parties are not prepared to

proceed with ADR. The parties have agreed to consider mediation or arbitration on an ongoing basis as an option for the resolution of this matter. The parties have attached their certifications required pursuant to Local Rule 16.1 (D)(3) (see Appendix B).

6. Modification of Schedule. The parties agree that all dates set forth herein may be modified by written agreement of the parties approved by the Court, or upon order of the Court for good cause shown.

Dated: May 17, 2006.

Plaintiff FM Holdings, LLC  
By its attorneys,

s/Kevin S. Murphy/

Sanford F. Remz (BBO# 549198)  
548670)

Defendants Bill Mahoney and  
Stephen Gregorio  
By their attorneys

s/Timothy C. Blank/

Timothy C. Blank (BBO#

Kevin S. Murphy (BBO# 638335)  
658134)  
Yurko, Salvesen & Remz, P.C  
657685)  
One Washington Mall, 11th Floor  
Boston, MA 02108  
Floor  
(617) 723-6900

Michael Shin (BBO#  
  
Matthew M. Lyons (BBO#  
  
Dechert LLP  
200 Clarendon Street, 27<sup>th</sup>  
  
Boston, MA, 02116  
(617) 728-7100